

OCT 31 2005

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA	)	CAUSE NO.: A-1639
DEPARTMENT OF INSURANCE,	)	
	)	
PETITIONER,	)	
	)	FINDINGS OF FACT,
vs.	)	CONCLUSIONS OF LAW,
	)	RECOMMENDED ORDER AND
THOMAS E. BAILEY,	)	ORDER
	)	
RESPONDENT.	)	

This matter came on for hearing on the 13<sup>th</sup> day of October, 2005, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Martin Swanson. Thomas E. Bailey ("Respondent") was present and not represented by counsel. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was introduced and the matter taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed Nebraska non-resident insurance producer whose registered business address with the Department is 2201 West Broadway, #6, Council Bluffs, Iowa 51501. (Ex. 1).
2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. On or about September 9, 2005, the Department served the Petition and Notice of Hearing on Respondent by certified mail, return receipt requested, at his address of record. Respondent received the Petition and Notice of Hearing on or about September 15, 2005, as evidenced by the receipt card returned to the Department on September 23, 2005. (Ex. 1).

4. On or about April 16, 2004, Respondent applied to the Department for a non-resident insurance producer license. (Ex. 2). At the time of application, Respondent marked the response to Part III, C, with a "no" response to the question of "[h]ave you even been convicted of or pled nolo contendere (no contest) to any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you?"

5. At the time of his application, Respondent had a pending criminal indictment issued in federal court on March 20, 2002 that he did not disclose to the Department. (Ex. 2).

6. On or about February 16, 2005, Respondent pleaded guilty to Count I of the indictment and subsequently on May 17, 2005, was sentenced to five years probation and payment of a \$10,000 fine. (Ex. 2).

7. Respondent testified that he talked to his manager about the indictment at the time of indictment and offered to resign from his job, but the manager reviewed the matter and determined, based on his review of the federal violent crimes act as described in the Department bulletin CB-95, Exhibit 4, that Respondent did not have to resign employment or report the incident to insurance regulators.

8. Respondent admits that he did not report either the indictment or the subsequent conviction to the Department. Respondent also admits that he did not know

the requirement of Nebraska law existed in the Insurance Producers Licensing Act to report this information to the Department.

9. Respondent is currently a property and casualty independent agent who owns an agency in Iowa with a partner. Respondent obtained an Iowa resident producer license in 2001, before the indictment, and testified that he has discussed this current situation with the Iowa staff and that his resident insurance producer license remains in effect at this time. In order to maintain Respondent's non-resident license in Nebraska, he must maintain a resident license in his state of residency.

10. After review of Exhibit 3, Respondent's written statement; Exhibit 5, Respondent's computer records analysis; and Exhibit 6, Respondent's psychological evaluation, the hearing officer finds Respondent's explanation of the indictment and the surrounding circumstances to be credible and that allowing Respondent to continue to engage in the business of insurance as a non-resident licensed insurance producer would not be harmful to policyholders. However, if the Iowa insurance commissioner should determine in the future to revoke Respondent's license, his license in Nebraska will terminate as a matter of law.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-4041 et seq.*

2. The Department has personal jurisdiction over Respondent.

3. Respondent violated *Neb. Rev. Stat. §44-4059(1)(a)* by providing incorrect, misleading, incomplete, or materially untrue information in the license

application. Respondent violated *Neb. Rev. Stat. §44-4059(1)(f)* when convicted of a felony or a Class I, II or III misdemeanor.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent pay an administrative fine of \$500.00 within thirty (30) days from the date the Director of Insurance signs this order.

Dated this 19<sup>th</sup> day of October, 2005.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE


  
Christine Neighbors  
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance v. Thomas E. Bailey, Cause No.: A-1639.

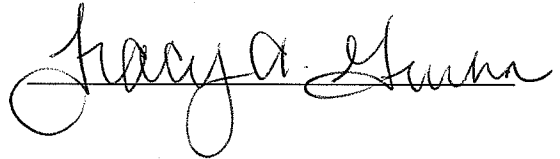
Dated this 31<sup>st</sup> day of October, 2005.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
L. TIM WAGNER  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon the Respondent by mailing a copy to Respondent at 2201 West Broadway, #6, Council Bluffs, IA 51501 by certified mail, return receipt requested, and by U.S. Mail, postage prepaid, on this 31<sup>st</sup> day of October, 2005.

Handwritten signature of Tracy A. Lunn in cursive script.